IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.4 OF 2007
IN
WRIT PETITIO NO.9361 OF 2005

Mr. Sunny Jossey ...Appellant(Orig.Ptnr.)
Vs.
M/s. Silvershine Products & Anr. ...Respondents
(Orig.Respondents)

Mr.Arshad Shaikh i/b. V.M. Parkar for Appellant
R.M.Joshi for Respondents 1 and 2

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 4TH APRIL, 2007

P.C.

1. Heard.

2. The Appellant had filed complaint before the Industrial Tribunal of his services being terminated under Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices (M.R.T.U. 7 U.L.P.) Act, 1971 alleging unfair practices as specified in Schedule IV Item No.9 and 10 of the above Act. The Industrial Court found that the complainant is not a workman within the meaning and definition of workman under the provisions of the Act, and thereby

dismissed the complaint.

3. The order was challenged before the learned Single Judge of this Court, which concurred with the findings of the Industrial Court and dismissed the Petition.

4. It is the case of the Appellant that the Industrial Tribunal as well as the learned Single Judge of this Court erred in holding that the Petitioner is not a workman and for that purpose has drawn the attention of this Court to the decision of Supreme Court rendered in the case of Anand Bazar Patrika (P) Ltd. Vs. The Workmen, 1970(3) Supreme Court Cases 248 .

5. It is submitted that the service contract which has been entered between the parties stipulating the terms and conditions on which the Appellant was employed was obtained by the Respondent empowered as per their dictate and that the said service contract cannot be the only factor to consider whether the Appellant is the workman or not, as the Appellant could not bargain in the matter being in need of a job.

6. It is submitted that the evidence on record clearly shows that the dominant purpose for which the Appellant's services

have been engaged is that of a workman and therefore, the finding of the Industrial Tribunal as well as the learned Single Judge of this Court cannot be sustained.

7. With the assistance of the learned Counsel for the parties we have gone through the evidence on record. We do not find that the finding arrived at by the Industrial Tribunal which has been upheld by the learned Single Judge of this Court by relying upon the evidence on record and the service contract that the appellant is not a workman is perverse, because, it clearly goes to show that the Appellant was not employed as a workman as defined under Section 2(s) by the Industrial Disputes Act and the terms of the contract of service clearly spell out the nature of the work for which he was employed which brings his case beyond the perview of the definition of workman as provided under the I.D. Act. We do not find any error or illegality in the order, and therefore, the Letter Patent Appeal is dismissed.

(J.N.PATEL, J.)

(SMT.ROSHAN DALVI, J.)